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IN THE

Supreme Court of the United States

October Term, 1961

No. 779

CARL M. FIELD, as Trustee in Bankruptcy, in the Estate of Giant Outlet Market, Inc., Bankrupt,
Petitioner,

vs.

BANKERS TRUST COMPANY and THE FIRST NATIONAL CITY BANK OF NEW YORK,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF FOR BANKERS TRUST COMPANY, RESPONDENT, IN OPPOSITION

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Opinions Below

The opinion of the Court of Appeals (Pet. App. 10 *et seq.*) is reported at 296 Fed. 2d 109. The opinion of the District Court is reported at 184 F. Supp. 23.

Jurisdiction

Respondent rests on the statement of jurisdiction contained in the application for a writ.

Question Presented

May a trustee in bankruptcy of a corporation recover from the bank, the respondent Bankers Trust Company (hereinafter called "Bankers"), for moneys paid out by Bankers by checks drawn on the corporate account payable to third parties, and resulting in no benefit to Bankers in the absence of proof that Bankers had knowledge that said payments impaired the capital of the corporation.

Statutes Involved

Section 58 of the New York State Stock Corporation Law is printed in the opinion below of the Circuit Court (Pet. App. 14).

Section 95 of the New York State Negotiable Instruments Law reads as follows:

> "To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith, but the drawing or making of a check or other negotiable instrument by an officer or agent of a corporation against the account of, or in the name of such corporation, to himself as payee, or the endorsement of a check or other negotiable instrument in the name of such corporation, to himself as endorsee, and in either case the cashing

of such check or other negotiable instrument or the deposit thereof to his personal account, and whether such check or other negotiable instrument is drawn against an account standing in the name of such corporation, or in the name of such officer or agent of such corporation as such, shall not be sufficient to put a bank, banker or trust company on inquiry as to the authority of such officer or agent, or impute knowledge of any infirmity or defect in such check or other negotiable instrument, provided such bank, banker or trust company have on file an authorization from said corporation showing that the said officer or agent is authorized on behalf of the corporation to perform any of the above acts for unlimited or limited amounts, and that the amount of the said check or negotiable instrument does not exceed the maximum limits of the amount so contained in the authorization so filed for the said officer or agent when such a limitation is contained therein."

Statement

Except to the extent noted, *infra*, p. 6, the facts upon this appeal are adequately stated in the Circuit Court's opinion (Pet. App. 10-18).*

* The printed opinion contains a typographical error in that the word "except" contained on the 11th line from the bottom of page 17 of the Appendix is erroneous. This word should be "expect".

Argument

This Court has repeatedly stated that in dealing with issues of state law that enter into judgments of federal courts it will hesitate to overrule decisions by federal courts skilled in the law of particular states unless their conclusions are shown to be unreasonable (*Propper v. Clark*, 337 U. S. 472). The application for a writ of certiorari herein should be denied because the judgment of the Circuit Court below is clearly consonant with the decisions and statutes of New York State or the law of any other jurisdiction.

A

Petitioner never claimed in its argument or in the affidavits in this record that respondent Bankers had *actual* notice that the payment of the checks on the corporate account was illegal under Section 58 of the Stock Corporation Law. Rather, petitioner claims that Bankers had *constructive* notice of such illegality; but the only facts to establish such constructive knowledge are the cashing or paying of corporate checks which, at the worst, might be deemed for the benefit of corporate officers. Yet §95 of the New York Negotiable Instruments Law expressly states that knowledge of these very facts, *i.e.*, cashing or paying of checks for the benefit of corporate officers "shall not be sufficient to *put a bank* * * * *on inquiry* as to the authority of such officer or agent, or *impute knowledge* of any infirmity or defect in such check * * * provided such bank * * * have on file * * *" a corporate resolution permitting such acts (italics ours). The corporate resolution on file in the bank is at

least as broad as the language of 95. Therefore 95 expressly negatives that these facts will "impute knowledge" or put Bankers on inquiry to verify whether or not the transactions were legal.

In *Reif v. Equitable Life Assurance Society*, 286 N. Y. 269, 275, the New York State Court of Appeals recognized the immunity conferred on a bank when such a corporate resolution was received by it.

As indicated by the Circuit Court opinion (Pet. App. 14) and the brief of petitioner in the Circuit Court (p. 8) the petitioner did not contest the adverse rulings holding that the payments to others did not result in a claim against Bankers in conversion or fraudulent transfer. Petitioner's sole claim is that the transactions which are set forth in the complaint violate 58 of the New York Stock Corporation Law. The Court of Appeals correctly construed this statestatute and the applicable state law in stating that liability under this section is *expressly* imposed only upon directors of the corporation. Liability under said statute was extended to transferees of corporate property only where the transferee knew that such transfer did impair the capital of the corporation (Pet. App. 15-16).

Petitioner is incorrect in claiming that *Coucia* (Pet. Brief p. 7) held a transferee liable even though without knowledge of a violation of 58. Although the New York State Court of Appeals in *Coucia* wrote no opinion, a reading of the summary of the case prepared by the State Reporter indicates that the action was brought against *directors* for dividends paid *by* them and not *to* them as *transferees*. An examination of the record on appeal in *Coucia* confirms this conclusion. Thus *Coucia* does not impugn the cases cited in the opinion below (Pet. App. 15-16)

to establish that a transferee's liability under §58 requires proof of knowledge by the transferee of the impairment of capital.

It is submitted that the Supreme Court should not interfere with the judgment of the court below that nothing "in the circumstances sufficiently put Bankers on inquiry to require it to ascertain the amount of Giant's (Corporation's) liabilities and capital and the value of its assets, and thus to compute whether each transaction impaired capital" (Pet. App. 17).

B

Since Bankers was not a transferee of these funds and received no benefit from same, even if Bankers had had knowledge that the payments would impair capital under Section 58, the New York cases establish that Bankers would not be liable herein (Pet. App. 16). *Bischoff* and *Grace*, cited by the opinion below as indicating a doubt upon such holding, actually involved cases of transferees of misappropriated assets (as distinguished from a defendant that is not a transferee).

C

The dismissal of the petitioner's action was based upon a motion by Bankers for summary judgment. The courts below presumably assumed a violation of §58 in order to definitively dispose of plaintiff's claim. However, none of the *prima facie* facts of a claim under Section 58 of the Stock Corporation Law is contained or even mentioned in petitioner's opposing affidavits. Therefore, Bankers would be entitled to summary judgment dismissing petitioner's claim (*Engel v. Aetna Life*, 139 Fed. 2d 469 (C. C. A. 2d 1943); *Lindsey v. Leary*, 149 Fed. 2d 899 (C. C. A. 9th)).

Conclusion

For the foregoing reasons the petition for a writ of certiorari should be denied.

Respectfully submitted,

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